88- 1814

Supreme Court, U.S.
FILED
MAY 9 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD E. STINNER,
Petitioner

v.

ELEANORE STINNER
Respondent

v.

THE PENSION PLAN OF THE BETHLEHEM STEEL CORPORATION AND SUBSIDIARY COMPANIES,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

James R. Fiorentino
561 East Market Street
P.O. Box 28
Bethlehem, PA 18016
(215) 865-1337

Attorney for Petitioner
Donald E. Stinner

PACKARD PRESS LEGAL DIVISION, 1617 JFK BOULEVARD, PHILA., PA 19103 (215) 563-9000

QUESTIONS PRESENTED FOR REVIEW

The Congress of the United States amended The Employee Retirement Income Security Act of 1974, commonly known as ERISA, with the passage of the Retirement Equity Act of 1984, commonly known as REA, to provide a legislative exception to the exemption from attachment bestowed upon ERISA qualified pension plans. By the creation of specific, detailed, and technical requirements for the qualification of domestic relations orders Congress evidenced an intent to restrict the alienation of ERISA pension plans while addressing the public policy concerns regarding the enforcement of domestic relations orders.

On February 5, 1980 a trial court entered an order in consolidated actions in assumpsit and in equity to enforce a 1977 Agreement for the payment of post-divorce alimony. Post-divorce alimony was not available in a divorce proceeding in Pennsylvania until after the entry of the subject order. However, it was legal to enter into a contract for such payments.

Has the Supreme Court of Pennsylvania violated the language and intent of ERISA and REA by holding that the 1980 order was entered pursuant to state domestic relations law, and therefore, meets the technical requirements of a qualified domestic relations order?

Has the Supreme Court of Pennsylvania violated the language and intent of ERISA and REA by holding that the 1980 order is a qualified domestic relations order even though said order fails to give to the judgment creditor a specfic interest in the subject pension benefits?

Does the decision of the Supreme Court of Pennsylvania constitute an impermissible conflict with federal law thereby justifying this court's acceptance of jurisdiction and the grant of a Writ of Certiorari and the reversal of the illegal garnishment of the Petitioner's federally protected pension benefits?

PARTIES TO THE PROCEEDINGS IN THE SUPREME COURT OF PENNSYLVANIA, THE SUPERIOR COURT OF PENNSYLVANIA, AND THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY

Petitioner – Appellee – Defendant, Donald Stinner

Respondent – Appellant – Plaintiff, Eleanor Stinner

Respondent – Appellee – The Pension Plan of the Bethlehem Steel Corporation and Subsidiary Companies*

*Although listed as a Respondent herein, the Pension Plan of the Bethlehem Steel Corporation and Subsidiary Companies opposed the garnishment in the state courts for failure to meet the requirements for classification as a Qualified Domestic Relations Order. The Pension Plan does not oppose the granting of this Petition.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Parties to the Proceedings ii

Table of Contents iii

Table of Authorities v

Opinions Below 1

Statement of Jurisdiction 2

Statutes Involved 2

Statement of the Case 4

Reasons Relied Upon for the Allowance of the Writ 7

1. THE DECISION OF THE SUPREME COURT OF PENNSYLVANIA IS VIOLATIVE OF THE LANGUAGE AND INTENT OF ERISA AS AMENDED BY REA AS IT HOLDS THAT AN ORDER ENFORCING AN ALIMONY AGREEMENT ENTERED PRIOR TO THE TIME WHEN THE STATE DOMESTIC RELATIONS LAWS OF PENNSYLVANIA ALLOWED FOR POST-DIVORCE ALIMONY IS AN ORDER ENTERED PURSUANT TO A STATE DOMESTIC RELATIONS LAW 7

2. THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AS AMENDED BY THE RETIREMENT EQUITY ACT PREEMPTS THE STATE COURT DECISION TO ALLOW FOR THE ATTACHMENT OF THE PETITIONER'S FEDERALLY PROTECTED PENSION BENEFIT 11

3. THE PENNSYLVANIA SUPREME COURT'S DEFINITION OF THE FEDERAL TERM STATE DOMESTIC RELATIONS LAW IS AN

TABLE OF CONTENTS – *(Continued)*

Page

ARBITRARY AND RESULT ORIENTED DEFINITION WHICH IS WHOLLY INCONSISTENT WITH THE FACTS OF THIS CASE AND DECADES OF PENNSYLVANIA STATUTORY AND COMMON LAW 12

CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases: Page

Brown v. Hall, 495 Pa. 635, 435 A.2d 859 (1981) .. 9

Comm. ex rel. Cook v. Cook. 303 Pa. Super. 61, 449 A.2d 577 (1982) 9

Comm. ex rel. Jones v. Jones, 216 Pa. Super. 1, 260 A.2d 809 (1969) 9, 13

Hisquierdo v. Hisquierdo, 439 U.S. 572, 99 S.Ct. 802, 59 L. Ed. 2d 1 (1979) 11

Hooker v. Hammer, 497 F. Supp. 152 (W.D. Pa. 1980) 9

Kay v. Kay, 460 Pa. 680, 334 A.2d 585 (1975) 9

Kohn v. Kohn, 242 Pa. Super. 435, 364 A.2d 350 (1976) 15

Schmitz v. Schmitz, 305 Pa. Super. 328, 451 A.2d 555 (1982) 9

Stambaugh v. Stambaugh, 458 Pa. 147, 329 A.2d 483 (1974) 8

Stern v. Stern, 430 Pa. 605, 243 A.2d 319 (1968) . 9

Stinner v. Stinner,

Opinion of the Supreme Court of Pennsylvania, ___ Pa. ___ , 554 A.2d 45 (1989); Appendix A. 8

Opinion of the Superior Court of Pennsylvania, 362 Pa. Super. 219, 523 A.2d 1161 (1987); Appendix B 6, 9

Opinion of the Court of Common Pleas of Northampton County, Pennsylvania; Appendix C dated January 20, 1986 6

Opinion and Order of the Court of Common Pleas of Northampton County dated February 5, 1980; Appendix D 5

TABLE OF AUTHORITIES – *(Continued)*

Cases: Page

Opinion and Order of the Court of Common Pleas of Northampton County dated October 28, 1980; Appendix F 5, 10

Wiegand v. Wiegand, 349 Pa. 517, 37 A.2d 492 (1944) 9, 13

STATUTES:

Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. §§1000-1461 (1982). 4, 5, 6, 7, 8, 10, 11, 12

The Pennsylvania Divorce Code of 1980, 23 Pa. C.S.A. §101-801 ..... 4, 14

The Pennsylvania Divorce Law of 1929, 23 P.S. §10, 45, 47, 48 ..... 4, 8, 14

Retirement Equity Act of 1984, 29 U.S.C. §1056(d) (1982) and Supp. III (1985). 4, 5, 6, 7, 8, 10, 11, 12

United States Constitution, Article VI, Clause 2 ... 11

RULES:

Pennsylvania Rules of Civil Procedure, 42 Pa. C.S.A. 1910.1 et seq. 12, 13

No.

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD E. STINNER,

Petitioner

v.

ELEANORE STINNER

Respondent

v.

THE PENSION PLAN OF THE BETHLEHEM STEEL CORPORATION AND SUBSIDIARY COMPANIES,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

OPINIONS BELOW

The Opinion of the Supreme Court of Pennsylvania is reported at ____ Pa. ____, 554 A.2d 45 (1989) and reproduced at Appendix A. The Opinion of the Superior Court of Pennsylvania is reported at 362 Pa. Super 219, 523 A. 2d 1161 (1987) and reproduced as Appendix B. The Opinion of the Court of Common Pleas of Northampton County, Pennsylvania, is unreported and reproduced as Appendix C. The opinion and order of the Court of Common Pleas of Northampton County dated February 5, 1980 is unpublished and reproduced at

Appendix D. The opinion and order of the Court of Common Pleas of Northampton County dated October 28, 1980 is unpublished and reproduced at Appendix F.

STATEMENT OF JURISDICTION

The jurisdiction of your Honorable Court is invoked under 28 U.S.C. § 1257 (1988) in that Petitioner seeks review of a final judgment rendered by the highest court of the State of Pennsylvania, the Supreme Court of Pennsylvania, on February 8, 1989.

STATUTES INVOLVED

This case involves Section 206(d) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1000-1461 (1982), as amended by the Retirement Equity Act of 1984, 29 U.S.C. § 1056(d) (1982) and Supp. III (1985).

The pertinent provisions of Section 206(d) read as follows:

§§ 206(d) **Assignment or alienation of plan benefits.**

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

. . . .

(3) (A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph

(i) the term "qualified domestic relations order" means a domestic relations order

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements or subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies —

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined.

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

STATEMENT OF THE CASE

This case involves a decision of the Supreme Court of Pennsylvania which would allow for the garnishment of undistributed pension plan benefits to enforce a judgment based upon a contract for the payment of alimony. The Pension Plan established by The Bethlehem Steel Corporation is governed by the Employee Retirement Security Act of 1974 (ERISA), as amended by the Retirement Equity Act of 1984 (REA). 29 U.S.C. §1001 et seq.

The contract for the payment of alimony was entered in 1977 at a time when the state domestic relations laws of Pennsylvania would not have permitted an award of alimony under the facts of this case.[1]

On June 16, 1977, the parties entered into an Agreement, which provided, *inter alia,* for the payment of alimony from Donald Stinner to Eleanore Stinner in the amount of Two Hundred Fifty and 00/100 Dollars ($250.00) per week for the remainder of Eleanore Stinner's natural life or until she should remarry. By its express language the Agreement was "not to be merged into any judgment or decree of divorce granted to either party". Paragraphs Third and Twentieth to Agreement at Appendix E, pages A-39, A-40, A-45. The parties were

---

1. Prior to the enactment of the Divorce Code of 1980 by the Pennsylvania Legislature awards of post-divorce alimony were severely limited. 23 Pa.C.S.A. §101-801. Alimony could be obtained by a spouse who was insane or suffering from serious mental disorder. 23 P.S. §48, repealed by 23 Pa.C.S.A. §101-801. There was also a provision for alimony in a divorce from bed and board also known as a legal separation, which was not an absolute divorce of the type involved in the instant case. 23 P.S. §47, repealed by 23 Pa.C.S.A. §101-801.

divorced on September 6, 1977. Donald Stinner made no voluntary payments after May 21, 1979.

Eleanore Stinner brought actions in assumpsit and equity for the breach and enforcement of the Agreements on July 2, 1979. Donald Stinner responded by alleging Eleanore Stinner's entrance into a marital relationship which thereby terminated her contractual right to alimony.

On February 5, 1980, the Honorable Robert A. Freedberg, Judge of the Court of Common Pleas of Northampton County, granted Eleanore Stinner's Motions for Summary Judgment entering judgment against Donald Stinner in the action in assumpsit in the amount of Eight Thousand Six Hundred Sixty Six and 72/100 Dollars ($8,666.72) and, in the action in equity, ordering Donald Stinner to specifically perform his obligation under the Agreement. This order was affirmed by the Superior Court of Pennsylvania on November 30, 1981, in an unreported opinion.

Eleanore Stinner sought to garnish Donald Stinner's wages for non-payment. By Order of Court dated October 28, 1980 and in an unpublished opinion The Honorable Robert A. Freedberg denied the requested relief stating that "this matter involves a contractual claim". Appendix F, page A-50.

On July 26, 1985, Eleanore Stinner filed two Writs of Execution on The Bethlehem Steel Corporation to garnish Donald Stinner's pension plan. The General Pension Board of the Bethlehem Steel Corporation, as garnishee, declined to comply with the garnishment having determined that the Writs of Execution were not Qualified Domestic Relations Orders under Section 206(d) of ERISA, as amended by REA. 29 U.S.C. §1001 et seq.

The matter was submitted to the Court of Common Pleas of Northampton County upon a Stipulation of Facts and The Honorable Robert A. Freedberg refused to enforce the Writs of Execution upon the Pension

Plan. Judge Freedberg held that the February 5, 1980 Order upon which the Writs of Execution were based was not a "domestic relations order" made pursuant to a "State domestic relations law" as required by ERISA as amended by REA. Appendix C, page A-25.

Eleanore Stinner appealed this decision to the Superior Court of Pennsylvania which affirmed the decision of Judge Freedberg. In its opinion, the Superior Court, as per The Honorable Donald E. Wieand, stated that the Order in question was

> "based on a property settlement contract enforceable pursuant to general rules pertaining to the enforcement of contracts and not by virtue of any domestic relations law."

Stinner v. Stinner, 362 Pa. Super. 219, 523 A.2d 1161, 1164 (1987); Appendix B, page A-21.

Eleanore Stinner petitioned the Supreme Court of Pennsylvania for Allowance of Appeal which was granted.

The Supreme Court of Pennsylvania reversed the Superior Court of Pennsylvania to allow Eleanore Stinner to garnish Donald Stinner's pension plan with The Bethlehem Steel Corporation. It is this decision which is the subject of this Petition for a Writ of Certiorari.

The Supreme Court of Pennsylvania held that the Order of February 5, 1980 was a qualified domestic relations order within the meaning of Section 206(d) of ERISA as amended by REA.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. THE DECISION OF THE SUPREME COURT OF PENNSYLVANIA IS VIOLATIVE OF THE LANGUAGE AND INTENT OF ERISA AS AMENDED BY REA AS IT HOLDS THAT AN ORDER ENFORCING AN ALIMONY AGREEMENT ENTERED PRIOR TO THE TIME WHEN THE STATE DOMESTIC RELATIONS LAWS OF PENNSYLVANIA ALLOWED FOR POST-DIVORCE ALIMONY IS AN ORDER ENTERED PURSUANT TO A STATE DOMESTIC RELATIONS LAW.

In 1974 the United States Congress passed the Employee Retirement Income Security Act (ERISA). The Pension Plan of the Bethlehem Steel Corporation and Subsidiary Companies is an employee benefit plan subject to ERISA. Benefits provided by plans qualified under ERISA may not be assigned or alienated. 29 U.S.C. §1056(d). Pursuant to Section 514 of ERISA, 29 U.S.C. §1144, provisions of Section 206(d), 29 U.S.C. §1056(d), supersede "any and all state laws" insofar as they relate to the Plan.

Between the enactment of ERISA and passage of the Retirement Equity Act of 1984 (REA) considerable disagreement reigned over the question of whether ERISA's broad prohibition against assignment or alienation of benefits applied to spousal or child support orders. Judicial exceptions were carved into the legislative exemption in a manner which reflected the philosophical or analytical approach of the individual decision maker. The Retirement Equity Act was passed by Congress in 1984 in order to resolve these policy considerations and create a uniform system regarding the enforcement of support orders through employee benefit plans, consistent with federal preemption of this area.

REA provided a specific exception to ERISA's anti-alienation provision for Qualified Domestic Relations Orders, 29 U.S.C. §1056(d). While laden with numerous technical requirements the essential aspect of the exception is that the subject order must be "made pursuant to a state domestic relations law (including a community property law)", 29 U.S.C. §1056(d)(3)(B)(ii)(II).

The Supreme Court of Pennsylvania has determined that the February 5, 1980 order enforcing an Agreement entered into by Donald E. Stinner and Eleanore Stinner in 1977 was an order "made pursuant to a state domestic relations law" and therefore a qualified domestic relations order under REA. The state domestic relations law in Pennsylvania in existence at the time of the Agreement and at the time that the order enforcing the Agreement was entered did not allow for post-divorce alimony.[2] 23 P.S. §45-48; *Stambaugh v. Stambaugh*, 458 Pa. 147, 329 A.2d 483 (1974).

In its opinion in the instant matter the Supreme Court of Pennsylvania acknowledges this fact but notes that a separation agreement for the payment of alimony was valid, legal, and enforceable. *Stinner v. Stinner*, ____ Pa. ____, 554 A.2d 45, 48; Appendix A, page A-9.

Petitioner's dispute with the lower court's analysis arises out of its holding that an order enforcing such an agreement is one "made pursuant to a state domestic relations law".

As Judge Donald Wieand of the Superior Court of Pennsylvania noted in the opinion supporting the order reversed by the Supreme Court of Pennsylvania:

> "Because Husband and Wife were divorced in 1977 Wife could not have recovered permanent alimony under the law of this Commonwealth. The duty of support which Husband owed to Wife pursuant to

---

2. See Footnote No. 1 in the Statement of the Case.

> the domestic relations law of this Commonwealth came to an end when a decree in divorce was entered. [citations omitted]. Wife's rights, subsequent to divorce, were limited to those which had been created by contract. With respect to alimony payments provided by contract, Husband became a debtor and Wife became a creditor; and Wife's rights were determined accordingly. [citations omitted]."

Stinner v. Stinner, 362 Pa. Super. 219, 532 A.2d 1161 (1987); Appendix B, page A-22.

Indeed, it is impossible to find a reported Pennsylvania case where any post-divorce request for modification, interpretation, termination or other relief with respect to a separation or marital settlement agreement was not met with a holding that the parties rights, duties and obligations are based upon contract law. *Hooker v. Hammer,* 497 F.Supp. 152 (W.D. Pa. 1980) (action upon a marital property settlement agreement came within ambit of six year Pennsylvania statute of limitations applicable to suits upon contract); *Brown v. Hall,* 495 Pa. 635, 435 A.2d 859 (1981) (agreement for support payments enforced in equity notwithstanding current order in separate support proceeding); *Kay v. Kay,* 460 Pa. 680, 334 A.2d 585 (1975); *Stern v. Stern,* 430 Pa. 605, 243 A.2d 319 (1968); *Wiegand v. Wiegand,* 349 Pa. 517, 37 A.2d 492 (1944); *Schmitz v. Schmitz,* 305 Pa. Super. 328, 451 A.2d 555 (1982); (garnishment of cash surrender value in life insurance policy denied to former wife on grounds that obligation under separation agreement is based on contract); *Comm. ex. rel. Cook v. Cook,* 303 Pa. Super. 61, 449 A.2d 577 (1982) (contractual right to support from former spouse unenforceable in support action); *Comm. ex. rel. Jones v. Jones,* 216 Pa. Super 1, 260 A.2d 809 (1969).

The actions to enforce the 1977 Agreement were brought in 1980 by Eleanore Stinner and were brought in assumpsit and in equity. The February 5, 1980 order

from which the Writs of Execution upon the pension plan were based was an order which affirmed Petitioner's contractual obligation under the Separation Agreement and reduced that obligation to a judgment for a monetary amount. See Appendix D, page A-34. When Respondent Eleanore Stinner sought to attach Petitioner's wages for non-payment on the February 5, 1980 order the Honorable Robert A. Freedberg denied this request expressly holding that "this matter involves a contractual claim". No appeal of this decision was taken by Eleanore Stinner. *Stinner v. Stinner,* October 28, 1980 Order of the Court of Common Pleas of Northampton County, See Appendix F, page A-47.

The Supreme Court of Pennsylvania's analysis of the question of whether the subject order was entered pursuant to the state domestic relations law rather than contract law is fatally flawed by its simplistic definition of the federal term "state domestic relations law". Under their analysis any legal proceeding between former spouses with respect to alimony, spousal or child support could result in an order made to pursuant to the domestic relations law of the state.

If Congress had intended to allow for such liberal alienation of pension benefits it would not have defined Qualified Domestic Relations Order with the precise and technical language set forth in Section 206(d). In its enactment of REA Congress recognized the problem facing pension plan administrators across the country and provided a specific exception for certain domestic relations orders. If it had elected to do so, Congress could have provided that the exception would be made for any order dealing with alimony, spousal or child support. Clearly, Congress determined to carve out a narrow exception to the non-alienation provisions of ERISA.

Finally, as Justice Stephen Zappala noted in his dissent to the Supreme Court opinion, the Order of February 5, 1980 also fails to qualify as a qualified domestic relations order in that it fails to give the

creditor spouse a specific interest in the subject pension proceeds. Nor was the Separation Agreement ever incorporated into an order, judgment or decree. The Order of February 5, 1980 merely entered judgment on assumpsit and equity claims. It did not incorporate the Separation Agreement.

The Pennsylvania Supreme Court's decision reflects complete disregard of the clear language of ERISA, constitutes an impermissible conflict with the federal statute and, if upheld, would allow for the illegal attachment of Petitioner's federally protected pension benefits.

2. THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AS AMENDED BY THE RETIREMENT EQUITY ACT PREEMPTS THE STATE COURT DECISION TO ALLOW FOR THE ATTACHMENT OF THE PETITIONER'S FEDERALLY PROTECTED PENSION BENEFIT.

The decision of the Supreme Court of Pennsylvania is violative of the doctrine of federal preemption which is rooted in the Supremacy Clause of the United States Constitution. Art. VI, Clause 2.

The Petitioner recognizes the disinclination of the Federal Courts to assert jurisdiction in domestic matters. *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 99 S.Ct. 802, 59 L.Ed.2d 1, (1979). However, Your Honorable Court has permitted review under the Supremacy Clause where it is clear that Congress has "positively required by direct enactment" that state law be preempted. *Hisquierdo v. Hisquierdo,* supra. In ERISA, Congress established a system for the anti-alienation of pension benefits and with the practical and equitable amendment of REA, an exception from that proscription. Congress has created a clear and precise method for the determination of what types of state domestic relation orders would qualify as exceptions to the federal exemption. By the direct enactment of REA, Congress

has preempted the enforcement of Court orders which do not meet the definition of a Qualified Domestic Relations Orders.

The Pennsylvania Court's disregard for the clear language of the statute and the obvious intent of Congress constitutes an impermissible conflict with ERISA as amended by REA.

3. THE PENNSYLVANIA SUPREME COURT'S DEFINITION OF THE FEDERAL TERM STATE DOMESTIC RELATIONS LAW IS AN ARBITRARY AND RESULT ORIENTED DEFINITION WHICH IS WHOLLY INCONSISTENT WITH THE FACTS OF THIS CASE AND DECADES OF PENNSYLVANIA STATUTORY AND COMMON LAW.

When Congress created the Qualified Domestic Relations Order it did not define the term "State domestic relations law". A prudent decision given the federal propensity to bow to the individual states regarding their domestic relations matters. Presumably each individual state will place its own definition on this term based on its statutory and common law history regarding domestic relations. The Pennsylvania Court, as the ultimate state court, should have wide latitude in this process.

"Domestic relations" as the term has been previously used by the Pennsylvania Supreme Court has always meant spousal or child support. The Pennsylvania Rules of Civil Procedure set forth at Rules 1910.1 through 1910.31 govern all civil actions brought in the Courts of Common Pleas to enforce duties of support. An action for support is commenced by filing a Complaint with the *Domestic Relations* Section of the Court of Common Pleas; Rule 1910.4 of the Pennsylvania Rules of Civil Procedure. Rule 1910.1 specifically provides that the rules do not govern actions based upon a contract or agreement unless the contract or agreement provides for the application of the Rules of Civil Procedure. Actions

for permanent or temporary alimony are governed by separate rules regarding divorce actions. It should be noted that the Pennsylvania Rules of Civil Procedure are promulgated by the Supreme Court of Pennsylvania. 42 Pa. C.S.A.

However, should the Pennsylvania Court decide that, henceforth, separation agreements, whether or not merged or incorporated into a judgment, decree, or order are to be enforced pursuant to the domestic relations rather than the contractual law of the state then such a decision would not be subject to review by This Honorable Court.

Separation agreements executed after such a proclamation should certainly be interpreted according to the domestic relations law. The prospective application of this decision would be fair and equitable. Scriveners and clients would be on notice.

Query whether this matter would be active today had the Stinner Agreement been interpreted according to domestic relations rather than contractual law in 1980? Would Donald E. Stinner have been successful in urging that his former wife's co-habitation terminated her right to alimony payments? Would Donald E. Stinner have been eligible for a decrease in his alimony payments based upon changed circumstances? Would an inquiry have been made into Eleanore Stinner's income, expenses and needs?

Until the decision by the Pennsylvania Supreme Court in February of 1989 the answer was clear. No. A contract is a contract.

Judge Freedberg did not engage in any such inquiries when he entered his order of February 5, 1980. He treated the Agreement as no more than a contract. In doing so he was following decades of case precedent. *Wiegand v. Wiegand,* supra.; *Comm. ex. rel. Jones v. Jones,* supra.

It is instructive to note that even the Respondent Eleanore Stinner did not believe, until the Supreme

Court of Pennsylvania's decision, that her order of February 5, 1980 was an order made pursuant to a state domestic relations law. In her brief before the Supreme Court of Pennsylvania she admitted this deficiency:

> "at the time the parties entered into the property settlement agreement, on June 16, 1977, which was prior to the Divorce Code of 1980 (effective July 1, 1980), Eleanore Stinner could not have gotten an order "pursuant to state domestic relations law" providing for alimony as set forth in the property settlement agreement."

Brief of Eleanore Stinner before the Supreme Court of Pennsylvania, page 22.

As noted above, when the order in question was entered Pennsylvania did not recognize post-divorce alimony. Nor did it allow for No-Fault Divorce. When Petitioner sought a divorce in 1977 he was faced with the formidable and, perhaps, impossible task of proving that he was an innocent and injured spouse and that his wife had either committed adultery, desertion or bigamy, or had endangered his life, offered indignities to his person or been sentenced to prison for in excess of two (2) years. 23 P.S. § 10, repealed by 23 Pa. C.S.A. § 101-801. Irretrievable breakdown or irreconciliable differences were unavailable as grounds for divorce. As the Supreme Court of Pennsylvania noted in its opinion "the custom in Pennsylvania before June 30, 1980 (footnote admitted) was that it was common to induce spouses to forego divorce contests by entering into support agreements" 554 A.2d at 48, Appendix A, page A-8. Support is a misnomer, as is alimony, for neither support nor alimony were available after a divorce in Pennsylvania. This distinction is important inasmuch as

the alimony payments called for in the Stinner Agreement are unrelated to the economic circumstances or needs of the Respondent.[3]

At every corner of this case Donald Stinner and Eleanore Stinner have had their disputes resolved by the Courts of Pennsylvania by resort to the contract laws of Pennsylvania. At times such an analysis has favored Petitioner; at times, Respondent. Both parties knew when they entered into the Agreement in 1977 that the principles of contract law would govern any disputes. Both parties had counsel at the time of the entry of the Agreement.

The Pennsylvania Supreme Court's decision to consider the February 5, 1980 order as a qualified domestic relations order is a result oriented decision. Resort to extraordinary or improper means of enforcement out of sympathy for Eleanore Stinner ignores the fact that Petitioner Donald E. Stinner entered into the subject Agreement at a time when the antiquated laws of divorce in Pennsylvania provided him with no other option if he sought to obtain a divorce. The order of February 5, 1980 was an order made pursuant to contract law. The Pennsylvania Supreme Court can not change that fact.

---

3. It should be noted that a Pennsylvania Superior Court decision once considered the term "alimony" to be latently ambiguous so as to include child support or anything else in order to qualify for tax deductibility. *Kohn vs. Kohn,* 242 Pa. Super. 435, 364 A.2d 350 (1976).

CONCLUSION

For all the reasons stated above, it is respectfully requested that This Honorable Court grant a Writ of Certiorari to the Supreme Court of Pennsylvania in order to review this case.

Respectfully submitted,

James R. Fiorentino, Esq.
Attorney for Petitioner
Pa. Attorney I.D. No. 30706

APPENDIX

INDEX TO APPENDICES

Page

Appendix "A"
Opinion of the Supreme Court of Pennsylvania, dated February 8, 1989, *Eleanore Stinner v. Donald E. Stinner and Bethlehem Steel Corporation,* ____ Pa. ____ , 554 A.2d 45 (1989) A-1

Appendix "B"
Opinion of the Superior Court of Pennsylvania, dated April 6, 1987, *Eleanore Stinner v. Donald E. Stinner and Bethlehem Steel Corporation,* 362 Pa. Super. 219, 523 A.2d 1161, 1164 (1987) A-14

Appendix "C"
Opinion and Order of the Court of January 20, 1986, in the Court of Common Pleas of Northampton County, *Eleanore Stinner v. Donald E. Stinner* A-25

Appendix "D"
Opinion and Order of the Court dated February 5, 1980, in the Court of Common Pleas of Northampton County, Pennsylvania, *Eleanore Stinner v. Donald E. Stinner* A-34

Appendix "E"
Agreement made June 16, 1977 between Eleanore Stinner and Donald E. Stinner..... A-38

Appendix "F"
Opinion and Order of the Court dated October 28, 1980, in the Court of Common Pleas of Northampton County, *Eleanore Stinner v. Donald E. Stinner* A-47

APPENDIX "A"

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Eleanore Stinner, Appellant	:	No. 151 E.D. Appeal
v.	:	Docket 1987
Donald E. Stinner and	:	
Bethlehem Steel Corporation	:	
	:	
	:	
	:	

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the Order of the SUPERIOR COURT, be, and the same is hereby reversed.

Marlene F. Lachman, Esq.
Prothonotary

Dated: February 8, 1989

IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

ELEANORE STINNER,	:	No. 151 E.D. Appeal
	:	Dkt. 1987
	:	
Appellant	:	Appeal from the Order
	:	of the Superior Court,
	:	entered April 6, 1987,
v.	:	at No. 1258 PHL
	:	1986, affirming the
	:	Judgment of the
	:	Court of Common
	:	Pleas of Northampton
	:	County, entered
	:	January 20, 1986,
DONALD E. STINNER and	:	at Nos. 1979-C-7428
BETHLEHEM STEEL	:	and No.
CORPORATION,	:	1979-CE-7429
	:	
Appellees	:	362 Pa. Super. 219,
	:	523 A.2d 1161 (1987)
	:	
	:	ARGUED:
	:	April 11, 1988

OPINION OF THE COURT

JUSTICE STOUT FILED: February 8, 1989

This is an appeal from a decision of the Superior Court that affirmed a decision of the Court of Common Pleas of Northampton County that refused to enforce Appellant Eleanore Stinner's writ of execution to garnish Appellee Donald E. Stinner's pension plan in order to recover sums due Appellant for alimony. We reverse.

The question for decision is whether the Order of February 5, 1980[1] which was entered in enforcement of the parties' property settlement agreement of June 10, 1977, which contained provision for the payment of alimony to the wife until death or remarriage,[2] is a qualified domestic relations order within the meaning of Section 206(d) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§1001-1461

---

1. The Order reads:

AND NOW, this 5th day of February 1980, plaintiff's motions for summary judgment are granted. In the matter captioned at 1979-C-7428 (assumpsit) judgment is entered in favor of plaintiff Eleanore Stinner and against defendant Donald E. Stinner in the amount of $8,666.72

In the matter captioned at 1979-CE-7429 (equity) it is hereby ordered that defendant Donald E. Stinner specifically perform his obligation to pay weekly support payments of $250.00 to Eleanore Stinner until her death or remarriage, and that he become current in said payments within thirty days of the date of this order.

2. The third paragraph of the agreement reads:

Commencing as of June 6, 1977, and continuing until September 1, 1978, HUSBAND shall pay as alimony to WIFE for her maintenance the sum of Three Hundred and 00/100 ($300.00) Dollars per week. After September 1, 1978, HUSBAND shall pay as alimony to WIFE the sum of Two Hundred Fifty and 00/100 ($250.00) Dollars per week, said payments to continue for the remainder of WIFE's natural life or until such time as she should remarry, whichever shall first occur. HUSBAND shall deposit into the checking account of WIFE the sums payable hereunder two times per month commencing as of June 6, 1977.

(1982), as amended by the Retirement Equity Act of 1984, 29 U.S.C. §1056(d) (1982 & Supp. III 1985). The pertinent sections of the Act read:

Section 1056

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

. . . .

(3) (A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, *except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order.* Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph —

(i) the term "qualified domestic relations order" means a domestic relations order —

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraph [](C) . . . are met, and

(ii) the term "domestic relations order" means *any judgment, decree, or order (including approval of a property settlement agreement)* which —

(I) relates to the provision of child support, *alimony payments,* or marital property rights to a *spouse, former spouse,* child or other dependent of a participant, and

(II) is made pursuant to a *State domestic relations law* (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies —

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

29 U.S.C. §1056(d) (1982 & Supp. III 1985) (emphasis added). *See also* S. Rep. No. 575, 98th Cong. 2d Sess., *reprinted in* 1984 *U.S. Code Cong. & Admin. News* 2547, 2564-68 (summary of statute).

We hold that the Order in question is a qualified domestic relations order, that it is exempt from the anti-alienation provision of the Act, and that Appellant may garnish Appellee's pension to satisfy the Order.

Donald and Eleanore Stinner were married January 28, 1956. Some twenty-one years and seven months later, on September 6, 1977, they were divorced. About two and one-half months prior to divorce, the Stinners entered into a property settlement agreement which

provided, among other things, that Mrs. Stinner, who had custody of their two daughters then ages sixteen and seventeen, would remain in the family home, and that Mr. Stinner would pay Mrs. Stinner alimony in specified sums for the rest of her natural life or until she remarried.[3]

Mr. Stinner honored the agreement for only eighteen months.

On July 2, 1979, Mrs. Stinner filed a complaint in assumpsit for breach of the agreement and a complaint in equity to enforce it. The trial judge entered judgment for $8,666.72 in the assumpsit action and ordered specific performance in the equity action. This Order was affirmed without opinion. *Stinner v. Stinner, 296 Pa. Super. 645, 440 A.2d 1262 (1981).*

Mr. Stinner still did not pay.

On July 26, 1985, Eleanore Stinner filed two writs of execution on Appellee Bethlehem Steel Corporation to garnish Mr. Stinner's pension, which Bethlehem Steel established under the provisions of ERISA. Bethlehem Steel refused to comply with the garnishment on the ground that the writ of execution served upon the plan administrator was not a qualified domestic relations order under ERISA, because it:

> (1) Was not "made pursuant to a state domestic relations law" [ERISA §206(d) (3) (B) (ii) (II), 29 U.S.C. §1056(d) (3) (B) (ii) (II)];

---

3. In addition, the agreement set forth the understanding of the parties on other domestic relations matters. It imposed on Mr. Stinner the duty to provide funding for the children's education, to maintain Blue Cross and Blue Shield coverage for them, and it set forth his visitation rights. It also provided that he should claim the children as exemptions for federal income tax purposes. He agreed to maintain his wife and children as irrevocable beneficiaries under a Metropolitan Life Insurance policy, which was provided "as a benefit of his employment with Bethlehem Steel Corporation," and to repay a $5,000 loan Mrs. Stinner made to him.

(2) Did not state "the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the Order" [ERISA §206(d) (3) (C) (i), 29 U.S.C. §1056(d) (3) (C) (i);

(3) Did not "clearly specify . . . the amount or percentage of the participant's benefit to be paid by the Plan to [Plaintiff], or the manner in which such amount or percentage is to be determined" [ERISA §206(d) (3) (c) (ii), 29 U.S.C. §1056(d) (3) (C) (ii)]; and

(4) Did not specify "the number of payments or the period to which such order applies" [ERISA §206(d) (3) (c) (iii), 29 U.S.C. §1056(d) (3) (C) (iii)].

Appellant sought relief from the Court of Common Pleas of Northampton County which, on January 20, 1986, denied and dismissed her writ, holding that neither the writ of execution nor the Order upon which it was based could be treated as a "qualified domestic relations order." On April 6, 1987, Mrs. Stinner met a similar fate when the Superior Court held that her right to alimony was based solely on contract and not on the domestic relations law of Pennsylvania and that, therefore, enforcement of the agreement for alimony payments could not be accomplished by attaching Mr. Stinner's pension plan. *Stinner v. Stinner*, 362 Super. 219, 523 A.2d 1161 (1987).

We agree that a writ of execution is not a qualified domestic relations order. A writ of execution puts in force the judgment or decree of a court. *Black's Law Dictionary* 1444 (5th ed. 1979). The judgment that it attempted to put in force, however, is not based solely on contract but is a qualified domestic relations order based on the decisional domestic relations law of Pennsylvania.

Domestic relations begin happily with marriage and end permanently and sadly in one of two ways, either by

death or divorce. If they end by divorce, the parties must follow the law of the jurisdiction in which the divorce is obtained. That law, whether statutory or common law, is the domestic relations law of that state, and orders entered pursuant to that law are domestic relations orders.

In holding that Mrs. Stinner's right to alimony was based solely on contract and not on the domestic relations law of this Commonwealth, the Superior Court took a myopic view of the word law. According to *Black's Law Dictionary*, law is derived either from judicial precedents, from legislation or from custom. *Id.* at 795-96. The custom in Pennsylvania before June 30, 1980[4] was that it was common to induce spouses to forego divorce contests by entering into support agreements. *See Hollman v. Hollman*, 515 Pa. 288, 528 A.2d 146 (1987). Moreover, section 514(c) of ERISA, as amended by the Retirement Equity Act of 1984, defines the term "State law" to include "all laws, *decisions*, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1) (1982 & Supp. III 1985) (emphasis added).[5] Prior to June 30, 1980, although there was no statutory right to alimony after divorce, except where a spouse was insane or was

---

4. On that date, the Pennsylvania legislature enacted a comprehensive divorce code. 1980 Pa. Laws 26, 23 Pa. Cons. Stat. Ann. §§ 101-801 (Purdon Supp. Pamph. 1988).

5. The general definition section of ERISA, 29 U.S.C. § 1002 (1982 & West Supp. 1988) nowhere defines "state law." Accordingly, we turn to § 1144(c)(1) for guidance. Moreover, the fact that the statute says "pursuant to *a* state domestic relations law" (emphasis added) does not compel the conclusion that Congress intended to encompass only a statute, as opposed to the common law. The committee reports were silent on the intention of Congress. *See* S. Rep. No. 575, 98th Cong., 2d Sess., *reprinted in* 1984 *U.S. Code Cong. & Admin. News* 2547; H.R. Rep. 655(I), 98th Cong., 2 Sess. (1984); H.R. Rep. 655 (II), 98th Cong., 2d Sess. (1984). Clearly, if Congress had intended a statute, it would have said so.

suffering from serious mental disorder,[6] or obtained a divorce from bed and board,[7] alimony by separation agreement, even though made in contemplation of divorce, was valid, legal, and enforceable. *See Lurie v. Lurie,* 246 Pa. Super. 307, 370 A.2d 739 (1976) (citing cases).

It was pursuant to this decisional law of the Commonwealth of Pennsylvania that the Stinners, in 1977, entered into the agreement for alimony. Upon the breach of that agreement the Court of Common Pleas, which had jurisdiction to enforce alimony agreements, entered the Order of February 5, 1980, which the writ of execution sought to enforce.

Having decided that the Order of February 5, 1980, is based on the decisional domestic relations law of this Commonwealth, we turn to ERISA to determine whether the Order is a qualified domestic relations order within the meaning of the Act, and thus exempt from the alienation clause.

The Order of February 5, 1980, meets all but one minor requirement of a qualified domestic relations order. It was related to alimony payments for a spouse who became a former spouse. It was made pursuant to the decisional domestic relations law of Pennsylvania regarding alimony. It specified the amount of the participant's benefits to be paid and the period to which the Order applied.[8] The Order named the participant and the alternate payee.

The only deficiency in the Order itself was that it did not contain the last known mailing address of either

---

6. 1972 Pa. Laws 202, *amending* 1929 Pa. Laws 430, *codified at* 23 Pa. Stat. § 48, *repealed by* 1980 Pa. Laws 26, 23 Pa. Cons. Stat. Ann. §§ 101-801 (Purdon Supp. Pamph. 1988).

7. 1929 Pa. Laws 430, 23 Pa. Stat. § 47, *repealed by* 1980 Pa. Laws 26, 23 Pa. Cons. Stat. Ann. §§ 101-801 (Purdon Supp. Pamph. 1988).

8. *See supra* note 2.

party. This, however, is not a fatal defect. The legislative history of the Act is instructive in this regard. There it is written:

> The committee intends that an order will not be treated as failing to be a qualified order merely because the order does not specify the current mailing address of the participant and alternate payee if the plan administrator has reason to know that address independently of the order.

S. Rep. No. 575, 98th Cong., 2d Sess., *reprinted in* 1984 *U.S. Code Cong. & Admin. News* 2547, 2566.

Obviously, the names of the participant and alternate payee are known to the plan administrator. The address of the participant is known to the plan administrator and, if the address of the alternate payee is not known to him, he has reason to know it independently from one of three sources readily available to him — his records, the records of the Court of Common Pleas, which entered the domestic relations order, or from the participant. But for the lack of one easily-ascertainable address, the rights of the alternate payee should not be lost.

The purpose of ERISA's proscription on alienation and assignment is to protect an employee from his own financial improvidence in dealing with third parties. The provision is not intended to alter traditional support obligations, but rather to assure that the employee and his beneficiaries reap the ultimate benefits due upon retirement. *American Telephone & Telegraph Co. v. Merry,* 592 F.2d 118, 124 (2d Cir. 1979); *Cody v. Riecker,* 454 F. Supp. 22, 25 (E.D.N.Y. 1978); *Hopkinson v. Hopkinson,* 323 Pa. Super. 404, 415-16, 470 A.2d 981, 987 (1984).[9]

---

9. *See also* H.R. Rep. No. 533, 93rd Cong., 1st Sess. 8, *reprinted in* 1974 *U.S. Code Cong. & Admin. News* 4639, 4646. It instructs that ERISA's

The result here is consistent with our decision in *Hollman v. Hollman,* 515 Pa. 288, 528 A.2d 146 (1987) (under the pension exemption statute of this Commonwealth, 42 Pa. Cons. Stat. Ann. § 8124(b)(1) (vii) (Purdon 1982), pension fund attachable pursuant to judgment for alimony based on separation agreement). *See generally Young v. Young,* 507 Pa. 40, 488 A.2d 264 (1985) (discussing Pennsylvania policy of permitting attachment of pensions to satisfy support orders).

The Order of the Superior Court is reversed.

Mr. Justice McDermott concurs in the result.

Mr. Justice Zappala files a Dissenting Opinion.

---

most important purpose will be to assure American workers that they may look forward, with anticipation, to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

ELEANORE STINNER,	: No. 151 E.D. Appeal Dkt.
	: 1987
Appellant	:
	: Appeal from the Order of
v.	: /the Superior Court, en-
	: tered April 6, 1987, at No.
DONALD E. STINNER and	: 1258 PHL 1986, affirming
BETHLEHEM STEEL	: the Judgment of the Court
CORPORATION,	: of Common Pleas of North-
	: ampton County, entered
Appellees	: January 20, 1986, at Nos.
	: 1979-C-7428 and No.
	: 1979-CE-7429
	:
	: 362 Pa. Super. 219,
	: 523 A.2d 1161 (1987)
	:
	: ARGUED: April 11, 1988

DISSENTING OPINION

JUSTICE ZAPPALA FILED: February 8, 1989

In order to be considered as a qualified domestic relation order under Section 1056(3)(B)(i) of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. §§ 1001-1461 (1982), as amended by the Retirement Equity Act of 1984, 29 U.S.C. § 1056(d) (1982 and Supp. III (1985)), a primary requisite is that the order give a spouse a specific interest in the subject pension proceeds. Because the majority fails to recognize this requirement, I must dissent.

Section 1056(3)(B)(i) states as follows:

> (i) The term "qualified domestic relations order" means a domestic relations order—

> ( ) which *creates or recognizes the existence of an alternate payee's right to* or assigns to an alternate payee the right to, *receive all or a portion of the benefits payable* with respect to a participant under a plan, . . . (Emphasis added)

Thus, before a spouse is entitled to receive any share of pension proceeds, that amount must be spelled out in the support order. For example, a court may order a spouse to pay $100 a month in alimony and 50% of that spouse's pension. The specific designation regarding the pension enables the order to be recognized as a "qualified domestic relations order" as that term is defined under the Act.

In the appeal *sub judice,* the Appellant is attempting to enforce a support agreement which provided for the payment of $250 per week for life. The Appellant appears to have leaped over the first hurdle by having her support agreement incorporated into a court order. See Majority Slip Opinion at 2, fn. 1. This does not alleviate the Appellant's second hurdle, however, which is to obtain a specific order assigning an interest in the pension plan. While the Appellant does have, at least arguably, a domestic relations order, the order of February 5, 1980, is not a "qualified domestic relations order." Therefore, there is no authority under the Act to attach the Appellee's pension.

ELEANORE STINNER, *Appellant*	) :)	IN THE SUPERIOR COURT OF PENNSYLVANIA
vs.	:)	
DONALD E. STINNER BETHLEHEM STEEL CORPORATION	:)	No. 1258 Philadelphia, 1986

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of Northampton County be, and the same is hereby affirmed.

By the Court:

Prothonotary

Dated: April 6, 1987

ELEANORE STINNER, *Appellant*	) :)	IN THE SUPERIOR COURT OF PENNSYLVANIA
vs.	:)	
DONALD E. STINNER BETHLEHEM STEEL CORPORATION	:)	No. 1258 Philadelphia, 1986

Appeal from Order of the Court of Common Pleas, Civil Division, of Northampton County, Nos. 1979-C-7248 and 1979-CE-7249.

BEFORE: WIEAND, OLSZEWSKI and CERCONE, JJ.

OPINION BY WIEAND, J.: Filed: April 6, 1987

The issue in this appeal is whether the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Retirement Equity Act of 1984 (REA),[1] permits the attachment of undistributed pension benefits to enforce a judgment recovered for breach of a pre-Divorce Code[2] agreement to pay alimony. The trial court held that such an attachment was not permitted and dismissed the writ. We affirm.

Eleanore Stinner and Donald Stinner were divorced on September 6, 1977. Prior thereto, on June 16, 1977, they had executed a written, property settlement agreement by the terms of which Husband agreed to pay Wife the sum of two hundred fifty ($250) dollars per week as alimony for and during the remainder of Wife's natural life or until she remarried. Husband made these payments until May 21, 1979, when he stopped and refused to make further payments.

---

1. 29 U.S.C. §1001 et seq.

2. Divorce Code of April 2, 1980, P.L. 63, 23 P.S. §101 et seq., effective June 30, 1980.

On July 2, 1979, Wife filed a complaint in assumpsit alleging breach of contract by Husband. She also filed a separate action in equity seeking a decree enforcing the provisions of the agreement which provided for continuing alimony payments. Summary judgments were entered in favor of Wife on February 5, 1980. In the assumpsit action, judgment was entered in favor of Wife and against Husband in the amount of $8,666.72. In the equity action, a decree was entered directing Husband to perform his agreement by paying $250 per week until Wife died or remarried. This order was affirmed on appeal without published opinion. *Stinner v. Stinner,* 296 Pa.Super. 645, 440 A.2d 1262 (1981). When Husband's default continued, Wife caused a writ of attachment to be issued against Husband's pension plan, naming as garnishee the "Bethlehem Steel Corporation Pension Plan for Salaried Employees."[3] The pension plan administrator denied that the pension plan was subject to attachment because the writ of execution was not a "qualified domestic relations order," which is necessary to permit an attachment of pension plan benefits under Section 206(d) of ERISA, as amended by REA, 29 U.S.C. §1056(d). The dispute was submitted to the trial court on an agreed statement of facts, and the court, following argument, entered an order dismissing the writ of execution. Wife filed exceptions, but these were also dismissed. She then appealed to this Court.

Initially, we address the propriety of wife's filing exceptions. The procedural rules pertaining to the enforcement of money judgments are contained at Pa.R.C.P. 3101 et seq. They do not specifically require or provide for post-trial relief in the nature of exceptions. However, Pa.R.C.P. 3145(a) provides that, as far as practicable, the procedure between plaintiff and garnishee shall be the same as though "the interrogatories

---

3. The praecipe for writ of execution recited an accrued indebtedness of $75,883.48, plus interest of $4,553.01.

were a complaint and the answer of the garnishee were an answer in a civil action." Rule 3147, moreover, contemplates a trial to resolve factual issues raised by the pleadings. If we continue the analogy by applying generally the rules applicable to civil actions, there would seem to be no reason not to apply the post-trial motion provisions of Pa.R.C.P. 227.1 to litigation between a judgment creditor and a garnishee. We conclude, therefore, that appellant's motion for post-trial relief, even though mislabeled "exceptions," was procedurally proper.

The pension plan established by Bethlehem Steel Corporation is governed by ERISA. The language of ERISA, at 29 U.S.C. §1144, provides that ERISA shall supersede any and all state laws insofar as they might otherwise pertain to employee benefit plans. As originally enacted, ERISA prohibited any assignment or alienation of pension benefits. In the years following enactment, however, there was substantial dissatisfaction with the harsh impact of ERISA in support cases. This dissatisfaction was particularly evident among the state courts which advocated exceptions to the non-alienability provisions of ERISA with respect to the enforcement of family support orders. In 1984, therefore, Congress enacted the REA amendment to ERISA. This amendment carved out a specific exception to the anti-alienation provisions to allow employee benefit plans to honor claims made pursuant to "qualified dōmestic relations orders." Under the REA amendment, pension benefits can be attached pursuant to a "qualified domestic relations order" issued by a state court.

The relevant language of ERISA, as amended by REA, is as follows:

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

. . . .

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that *paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order.* Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term *"qualified domestic relations order"* means a domestic relations order—

(I) which creates or recognizes the existence of an alternatve payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) *the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—*

(I) *relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and*

(II) *is made pursuant to a State domestic relations law (including a community property law).*

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

. . . .

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and any other alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

29 U.S.C. §1056(d) (emphasis added). The exception created by REA to the non-alienability of pension rights is narrow. It does not generally permit attachment against a pension plan to enforce a money judgment recovered for breach of contract.

Appellant concedes that neither her money judgment nor the court's decree of February 5, 1980 meets the requirements of a "qualified domestic relations order." She argues, however, that the court's order is a "domestic relations order" which is governed by REA's transitional provisions. These provisions dictate that in the case of a domestic relations order entered before January 1, 1985, the plan administrator

> (1) *shall* treat such order as a qualified domestic relations order if such administrator is paying benefits pursuant to such order on such date, and
>
> (2) *may* treat any other such order entered before such date as a qualified domestic relations order even if such order does not meet the requirements of such amendments.

29 U.S.C. §1001 (note 303(d)) (emphasis added).

Wife's basic premise is faulty. The court's order of February 5, 1980 is not a "domestic relations order." That order was based on an agreement dated June 16, 1977 and although it "relate[d] to . . . alimony payments," it was not "made pursuant to a State domestic relations law," as required by 29 U.S.C. §1056(d)(3)(B)(ii). Instead, it was an order based on a property settlement contract enforceable pursuant to general rules pertaining to the enforcement of contracts and not by virtue of any domestic relations law.

Prior to the Divorce Code of 1980, which became effective June 30, 1980, the law in this Commonwealth did not recognize permanent alimony except in cases where a dependent spouse was insane. See: *Lyall v.*

Lyall, 240 Pa.Super. 649, 361 A.2d 367 (1976); *Hedderick v. Hedderick,* 163 Pa.Super. 564, 63 A.2d 373 (1949); *Hickey v. Hickey,* 158 Pa.Super. 511, 45 A.2d 380 (1946); *Commonwealth v. Scholl,* 156 Pa.Super. 136, 39 A.2d 719 (1945). See also: Divorce Law of May 2, 1929, P.L. 1237, §45, 23 P.S. §45. Because Husband and Wife were divorced in 1977, Wife could not have recovered permanent alimony under the law of this Commonwealth. The duty of support which Husband owed to Wife pursuant to the domestic relations law of this Commonwealth came to an end when a decree in divorce was entered. *Commonwealth ex rel. Smith v. Smith,* 260 Pa.Super. 203, 393 A.2d 1224 (1978); *Watson v. Watson,* 243 Pa.Super. 23, 364 A.2d 431 (1976). Wife's rights, subsequent to divorce, were limited to those which had been created by contract. With respect to alimony payments provided by contract, Husband became a debtor and Wife became a creditor; and Wife's rights were determined accordingly. *Schmitz v. Schmitz,* 305 Pa.Super. 328, 451 A.2d 555 (1982). Wife's right to recover a judgment for the nonpayment of alimony was based on contract and not on the domestic relations law of this Commonwealth. See: *Hollman v. Hollman,* 347 Pa.Super. 289, 500 A.2d 837 (1985). See also: *Schmitz v. Schmitz, supra; Commonwealth ex rel. Jones v. Jones,* 216 Pa.Super. 1, 260 A.2d 809 (1969).

Appellant's reliance upon *Hopkinson v. Hopkinson,* 323 Pa.Super. 404, 470 A.2d 981 (1984), is misplaced. That decision was based upon the provisions of ERISA prior to its amendment by REA. Moreover, the order there being enforced was a consent decree ordering the husband to pay arrearages under an agreement for the support of children. Similarly, the decision in *Magrini v. Magrini,* 263 Pa.Super. 366, 398 A.2d 179 (1979), was not only based upon an unamended ERISA, but concerned the validity of proceedings to attach an ALCOA pension fund to enforce a support order which had been entered pursuant to the Civil Procedural Support Law,

42 Pa.C.S. §6701 et seq. Finally, the Supreme Court decision in *Young v. Young,* 507 Pa. 40, 488 A.2d 264 (1985), is also not determinative. There, the Court permitted a woman to attach the pension fund of her former husband, a police officer for the City of Easton, to enforce a judgment transferred from the State of New Jersey, where a court had entered a decree of equitable distribution. The Court's decision involved an interpretation of the provisions of Pennsylvania's Third Class City Code of 1931, as amended, 53 P.S. §35101 et seq., and did not involve either ERISA or REA. In contrast to these cases, the decision of this Court in *Hollman v. Hollman, supra,* pertained to the exceptions which REA specifically carved out of the anti-alienation provision of ERISA. There, we determined that a private support agreement, as opposed to a court order for support, was no different than any other contract and, therefore, could not be the basis upon which a party would be permitted to garnish his or her former spouse's pension.

Wife argues that because she was precluded by Pennsylvania law from recovering alimony in 1977, the only way in which she could provide for post-divorce support for herself was by contract. Whether it be called alimony or support, she suggests, the payments due her were such as to come within REA's purpose of establishing a strong policy in favor of spousal support. When the words of a statute are free from ambiguity, however, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. §1921(b). See: *In re Fox's Estate,* 494 Pa. 584, 588-589, 431 A.2d 1008, 1011 (1981); *Salvado v. Prudential Property and Casualty Ins. Co.,* 287 Pa.Super. 304, 308, 430 A.2d 297, 299 (1981). The language of ERISA, as amended by REA, is clear; a "domestic relations order" sufficient to qualify for enforcement against undistributed pension benefits must have been entered pursuant to "a State domestic relations law." Wife's right to alimony in the instant case was based solely on contract and not on the domestic

relations law of Pennsylvania. Enforcement of the contract calling for alimony payments could not be accomplished by attaching Husband's undistributed benefits in the Bethlehem Steel Corporation Pension Plan for Salaried Employees. Therefore, the trial court properly dismissed Wife's writ of attachment.

Order affirmed.

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

ELEANORE STINNER,	)	
Plaintiff	)	No. 1979-C-7428
	)	No. 1979-CE-7429
vs.	)	
	)	
	)	
DONALD E. STINNER,	)	
Defendant	)	

OPINION OF THE COURT

This matter is before the court on plaintiff's petition to enforce a Writ of Execution to garnish defendant's pension plan. The facts leading up to his petition are essentially undisputed. On June 16, 1977, the parties entered a property settlement agreement in anticipation of divorce, which was obtained on September 6, 1977. Pursuant to the written agreement, the defendant was obligated to pay to the plaintiff as alimony, Two Hundred Fifty ($250.00) Dollars per week for the remainder of plaintiff's natural life or until such time as she should remarry. On May 21, 1979, the defendant discontinued making payments pursuant to the agreement. On February 5, 1980, the court entered summary judgment in favor of the plaintiff in her action to enforce the agreement, and ordered the defendant to specifically perform his obligation to make the weekly payments. This order was affirmed by the Superior Court on November 30, 1981. When the defendant continued to withhold weekly payments, the plaintiff brought proceedings to attach both the defendant's person and his wages for failure to obey the court's order. On October 28, 1980, the court dismissed her petition, holding that "a court of

equity cannot enforce its decree for the payment of money due under a separation agreement by attachment of the person of the defaulting husband," and that plaintiff was not entitled to attach her former husband's wages because "this matter involves a contractual claim rather than an action or proceedings for support or for board for four weeks or less. Judicial Code §8127."

In March of 1981, plaintiff garnished a checking account held jointly by Mr. Stinner and his second wife. Defendant's objections to the garnishment were denied by this court which held that defendant's direct deposit of his pension check into the account, which was held as entireties property, was a fraudulent conveyance. The Superior Court affirmed on June 4, 1982.

Plaintiff now seeks to garnish defendant's pension plan, and to that end, on July 28, 1985, served two writs of execution on the pension plan of Bethlehem Steel Corporation. On August 5, 1985, the plaintiff's attorney was notified by the pension plan administrator that he would not comply with the writ of execution because the writ was not a "qualified domestic relations order" under §206(d) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Retirement Equity Act of 1984 ("REA"). 29 U.S.C. §1001 *et seq.*

The sole issue before the court is whether plaintiff's writ of execution, or the court order upon which it is based, can be treated as a "qualified domestic relations order" so as to allow plaintiff to garnish defendant's pension plan. After careful consideration of the briefs of counsel and the law, we hold that it cannot, and therefore deny plaintiff's petition for the reasons outlined below.

Section 206(d) of ERISA contains a broad prohibition against assignments or alienation of pension plan benefits. 29 U.S.C. §1056(d). In addition, §514 of ERISA provides that ERISA shall supersede any and all state laws insofar as they relate to any employee benefit plan. 29 U.S.C. §1144. Prior to the enactment of REA, a

large number of jurisdictions including Pennsylvania, through judicial decisions, recognized an implied exception to ERISA's alienation and assignment prohibition for family support and alimony obligations. In recognition of the need to define and codify the judicially created exceptions, Congress enacted REA, which amended ERISA by establishing an exception to ERISA's prohibition against alienation and assignment of pension plan benefits known as the "qualified domestic relations order." Thus, the act provides:

> (1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.
>
> . . .
>
> (A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.
>
> (B) For purposes of this paragraph –
>
> (i) the term "qualified domestic relations order" means a domestic relations order –
>
> (I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and
>
> (II) with respect to which the requirements of subparagraphs (C) and (D) are met, . . .

. . .

29 U.S.C. §1056(d)(3)

Plaintiff, while admitting that the court's order of February 5, 1980, does not meet the requirements set forth for a *"qualified* domestic relations order", argues that the 1980 order does meet the requirements set forth for a "domestic relations order" and therefore is governed by REA's transitional provisions which provide:

> (d) AMENDMENTS RELATING TO ASSIGNMENTS IN DIVORCE, ETC., PROCEEDINGS. – The amendments made by sections 104 and 204 shall take effect on January 1, 1985, except that in the case of a domestic relations order entered before such date, the plan administrator –
>
> (1) shall treat such order as a qualified domestic relations order if such administrator is paying benefits pursuant to such order of such date, and
>
> (2) *may treat any other such order entered before such date as a qualified domestic relations order even if such order does not meet the requirements of such amendments.* (Emphasis added)

29 U.S.C. §1001

Plaintiff argues that the 1980 order meets the requirements for a "domestic relations order" and therefore this exception permits the plan administrator to treat the order as a "qualified domestic relations order". Plaintiff then argues that the purposes of ERISA and equity demand that the plan administrator exercise his discretion in favor of the plaintiff/wife.[1]

---

1. Since we have decided that this exception does not apply to the instant order, we do not reach the issue of whether this court has the authority to order the plan administrator to exercise his discretion in favor of the plaintiff.

Defendant and the plan administrator oppose the petition on several grounds, but chiefly argue that the exception is not applicable to the instant order because the 1980 court order does not meet the requirements of a "domestic relations order". We agree.

> (ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which –
>
> (I) relates to the provisions of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and
>
> (II) is made pursuant to a State domestic relations law (including a community property law).
>
> 29 U.S.C. §1056(d)(3)

While we agree with the plaintiff that the 1980 order is an order which relates to the provision of alimony payments, the order, to be considered a "domestic relations order", must also be made "pursuant to a State domestic relations law."

Prior to the Divorce Code of 1980, the domestic relations laws of Pennsylvania expressly limited alimony, in cases of absolute divorce, to those situations where the dependent spouse was insane. 23 P.S. §45. The 1977 property settlement agreement therefore had no basis in the domestic relations laws of Pennsylvania, but rather was entered into pursuant to general principles of contract law. Similarly, the action to enforce the agreement was brought in assumpsit, and the resulting court order was an order affirming a contractual obligation and reducing that obligation to judgment rather than an order to pay support.[2]

---

2. In an earlier action where this court denied plaintiff's petition to attach defendant's wages, the court expressly held that

The instant case is indistinguishable from the recent Superior Court case of *Hollman v. Hollman,* No. 707 Pitts., slip. op. (Pa. Super. En Banc, November 1, 1985) (Tamilia, J.). In *Hollman,* the plaintiff sought to garnish her ex-husband's pension plan to collect on a 1982 judgment for arrearages which had accumulated because of his failure to make required payments pursuant to a 1969 agreement for support. The Superior Court held that a private support agreement, as opposed to a court order for support or a private support agreement which is incorporated into a divorce decree, is no different from any other contract, and therefore the wife's petition to garnish her ex-husband's pension in contravention to 42 Pa. C.S.A. §8124(b), must be denied, as would be a similar petition by any other creditor.

Plaintiff argues that this result is inconsistent with the purpose of ERISA to prevent dissipation of a pension so that the recipient can support his family and himself. Nevertheless, we are constrained to apply the law as it is plainly written. We are similarly mindful of the recent Pennsylvania Supreme Court case wherein the court held that a police pension may be attached in order to satisfy an order the purpose of which is to enforce an obligation of support, notwithstanding a prohibition against assignment and alienation similar to that in the instant case. *Young v. Young,* 488 A.2d 264 (Pa. Supreme Ct. – 1985). The *Young* court, guided by the Statutory Construction Act of 1972, 1 Pa. C.S.A. §1501 *et seq.,* which provides that statutes shall not be interpreted in such a way so as to defeat the very purpose of

---

NOTES *(Continued)*

"This matter involves a contractual claim". *Stinner v. Stinner,* October 28, 1980, slip. op. pg. 5 (Northampton County Common Pleas, Freedberg, J.). See also, *Schmitz v. Schmitz,* 451 A.2d 555, 557 (Pa. Superior Ct. – 1982) ("Although a separation agreement providing support for a spouse will continue subsequent to a divorce the obligation is based on a contract"); *Hollman v. Hollman,* No. 707 slip. op. (Pa. Super., November 1, 1985) (Tamilia, J.).

their enactment, read in an exception against the anti-alienation provision of 53 P.S. §39351 to allow the attachment of police pensions in family support cases, where the statute provided for no such exception.

The federal statute in the case at bar differs significantly in that, by virtue of REA, ERISA now specifically provides for an exception to the anti-alienation provisions for family support orders. Plaintiff's argument to the effect that the legislative intent of REA was to incorporate all of the pre-REA case law which created the implied exception to the anti-alienation provision flies in the face of a plainly worded statute. As aforesaid, Congress recognized the need to codify and define the judicially created exception, and in so doing made a conscious decision to include some involuntary attachments and to exclude others, such as that sought by the plaintiff in this case.[3]

Undeniably, this holding further restricts plaintiff's already limited remedies in her attempt to enforce the 1980 court order. Nevertheless, while defendant's real estate is encumbered, and the remedies provided for in the Divorce Code of 1980 are not available to plaintiff,[4] in accordance with the opinion of the Superior Court in this matter (slip. op. June 4, 1982, Hoffman, J.) plaintiff may execute on the pension funds as soon as the defendant receives them.

Lastly, plaintiff's petition also contains a request that the pension plan benefits be placed in an escrow account pending resolution of this issue, including the time of any possible appeals to this decision. Plaintiff's

---

3. We note also that the *Hollman* court distinguished the *Young* case in that the order which was sought to be enforced in *Young*, was a New Jersey court order for support and alimony made pursuant to New Jersey's domestic relations laws rather than a private agreement for support as in *Hollman* and the instant case.

4. Section 103 of the Divorce Code provides that the Divorce Code does not affect any marital agreement executed prior to the effective date of the Act.

request is premised on the escrow provision of REA which provides:

> (H) (i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall segregate in a separate account in the plan or in an escrow account the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.
>
> 29 U.S.C. §1056(d)(3)

The above provision is only applicable where there is a dispute over whether the "domestic relations order" in question is a "qualified domestic relations order". Since we have held that plaintiff does not possess a domestic relations order the provision is inapplicable, and we deny plaintiff's request.

WHEREFORE, we enter the following:

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

ELEANORE STINNER, Plaintiff	)	No. 1979-C-7428
	)	No. 1979-CE-7429
vs.	)	
DONALD E. STINNER, Defendant	)	

ORDER OF COURT

AND NOW, this 20th day of January, 1986, plaintiff's petition for writ of execution to garnish defendant's pension plan is hereby denied and dismissed.

BY THE COURT,

Robert A. Freedberg J.

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

ELEANORE STINNER, Plaintiff	:	NO. 1979-C-7428
vs.	:	IN ASSUMPSIT
DONALD E. STINNER, Defendant	:	
ELEANORE STINNER, Plaintiff	:	NO. 1979-C-7429
vs.	:	IN EQUITY
DONALD E. STINNER, Defendant	:	

OPINION OF THE COURT

These matters are before the court on plaintiff's motions for summary judgment. The parties entered into a separation agreement prior to their divorce ~~in 1977~~ which provides in relevant part:

> ~~After~~ September 1, 1978, HUSBAND shall pay as alimony to WIFE the sum of Two Hundred Fifty and 00/100 ($250.00) Dollars per week, said payments to continue for the remainder of WIFE's natural life or until such time as she should remarry, whichever shall first occur.

Both parties agree that defendant made payments in compliance with the agreement until May 21, 1979. Defendant's answer indicates that he stopped payments from that date because he believed plaintiff "has entered into a marital relationship" and, therefore, his obligation terminated. Plaintiff commenced these actions seeking money damages and specific performance.

Plaintiff's affidavit in support of her motions asserts that she resides with a male friend but has not married

him or held herself out to anyone as being married to him. No contradictory affidavit was filed by defendant. Rather, he deposed plaintiff's friend who stated that he lived with her, sharing her bedroom, and has taken two brief vacations with her. He denied being married to her or representing to anyone that they were married. Plaintiff did not contradict these assertions.

A party moving for summary judgment has the burden of proving that there is no material issue of fact, and the record must be examined in a light most favorable to the non-moving party. *Nash v. Chemetron Corp.,* 371 A. 2d 992 (Pa. Superior – 1977); *LeGrand v. Lincoln Lines, Inc.,* 384 A. 2d 955 (Pa. Superior 1978). Summary judgment should only be granted in a clear case. *Just v. Sons of Italy Hall,* 368 A. 2d 308 (Pa. Superior – 1976). All doubts as to the existence of a genuine issue of fact must be resolved against the moving party. *Hershkovitz v. Vespico,* 362 A. 2d 394 (Pa. Superior – 1976). A non-moving party may not rest upon mere allegations or denials in the pleadings to establish that there is a genuine issue of fact; rather, he must set forth such issues of fact by affidavit or as otherwise provided in Pa. R.C.P. 1035. *Amabile v. Auto Kleen Car Wash,* 376 A. 2d 247 (Pa. Superior – 1977).

Defendant argues that he should be allowed to produce evidence at trial as to plaintiff's marital status. However, he has not offered such evidence by affidavit or otherwise at this stage, and the matter must be decided on the record as it now exists. We, thus, consider whether plaintiff is entitled to summary judgment based on the allegations of her affidavit and the deposition testimony.

An agreement to pay support to a divorced spouse is enforceable. *Gillan v. Gillan,* 345 A. 2d 742 (Pa. Superior – 1975). However, defendant argues that by living with her male friend, plaintiff has remarried for purposes of the termination clause of the agreement. While we find no Pennsylvania cases on point, the weight of

authority of other jurisdictions is to the contrary. *McAnerney v. McAnerney,* 334 A. 2d 437 (Conn. – 1973); *In re Marriage of Harris,* 65 Cal. App. 3rd 143 (Calif. – 1976). See also *Starace v. Celebrezze,* 233 F. Supp. 452 (D.C. – W.D. Pa. – 1964). Contra *Levine v. Levine,* (359 N.Y.S. 2d 744 (N.Y. – 1974). Further, the intent of the parties in entering the agreement clearly was to provide plaintiff with financial security. Her current relationship affords her no such security, nor has defendant even averred that she receives voluntary support from her companion. In the absence of a provision in the agreement terminating the payments under the circumstances herein, we refuse to so hold.

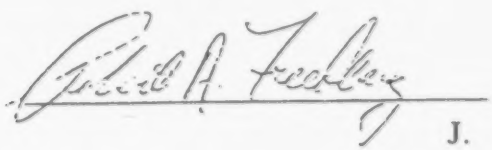
Defendant, citing *Gillan v. Gillan,* supra, contends that the agreement violates public policy because the payments are an inducement to plaintiff not to marry. *Gillan* holds that permanent alimony is inoffensive to public policy "so long as the payments are reasonably related to the needs of the former wife". Whether a contract is against public policy is a question of law for the court to determine from all of the circumstances in each case. *Peyton v. Marigiotti,* 156 A. 2d 865 (Pa. Supreme – 1959). The alimony payment of $250.00 per week is reasonably related to the needs of an adult. Thus, the agreement does not violate public policy.

ORDER AND FINAL DECREE

AND NOW, this 5th day of February, 1980, plaintiff's motions for summary judgment are granted. In the matter captioned at 1979-C-7428 (assumpsit) judgment is entered in favor of plaintiff Eleanore Stinner and against defendant Donald E. Stinner in the amount of $8,666.72.

In the matter captioned at 1979-CE-7429 (equity) it is hereby ordered that defendant Donald E. Stinner specifically perform his obligation to pay weekly support payments of $250.00 to Eleanore Stinner until her death or remarriage, and that he become current in said payments within thirty days of the date of this order.

BY THE COURT,



J.

AGREEMENT

THIS AGREEMENT made the 16th day of June, 1977, by and between ELEANORE STINNER of the Township of Hanover, County of Northampton and Commonwealth of Pennsylvania (hereinafter referred to as "WIFE") and DONALD E. STINNER of the Township of Whitehall, County of Lehigh and Commonwealth of Pennsylvania (hereinafter referred to as "HUSBAND").

WITNESSETH:

WHEREAS, the parties hereto are HUSBAND and WIFE, having been joined in marriage on January 28, 1956;

WHEREAS, by reason of disputes and unhappy differences, the parties have separated from each other and are now living separate and apart;

WHEREAS, WIFE has custody of the two children born of said marriage, namely Sally Ann Stinner, age 17, and Diana Stinner, age 16;

WHEREAS, it is the desire of the parties hereto to finally and for all time settle and determine their property rights, the right of maintenance of WIFE by the HUSBAND and any other rights and matters existing between them by virtue of said marital relationship; and

WHEREAS, both parties are represented by counsel, namely Howard S. Epstein, Esquire, attorney for HUSBAND and Richard J. Gasdaska, Esquire, attorney for WIFE.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and with the intention of being legally bound hereby, the parties agree as follows:

FIRST: HUSBAND and WIFE presently own as tenants by the entireties, real estate known and designated as No. 677 Yorkshire Road, Hanover Township, Northampton County, Pennsylvania, which property is

presently encumbered by a mortgage in favor of First Valley Bank. Simultaneously with the signing of this Agreement, HUSBAND agrees to execute a Deed to WIFE conveying all his right, title and interest in and to said premises. Said Deed shall be held in escrow by Howard S. Epstein, Esquire, attorney for HUSBAND, and at such time as a final decree in divorce is entered between the parties, said Deed shall be delivered to Richard J. Gasdaska, Esquire, attorney for WIFE. It is agreed that such conveyance shall be subject to said mortgage in favor of First Valley Bank. However, HUSBAND agrees to make monthly payments of principal and interest on the aforementioned mortgage to First Valley Bank and to continue such monthly payments due and payable until September 1, 1978.

In addition to said mortgage payments, HUSBAND agrees to pay all insurance premiums on said real estate until September 1, 1978. County and township real estate taxes for the calendar years 1977 and 1978, and School District real estate tax for the fiscal years 1977 and 1978 shall be paid by the HUSBAND.

HUSBAND shall provide WIFE with receipts evidencing payment of the aforementioned mortgage, insurance premiums and real estate taxes upon her request.

SECOND: All furniture, furnishings and equipment located at 677 Yorkshire Road, Hanover Township, Northampton County, Pennsylvania, shall constitute the sole and exclusive property of the WIFE who shall own and enjoy the same independently of any claim or right of the HUSBAND and with full power to dispose of such personal property as fully and effectively in all respects as though she were unmarried. HUSBAND shall execute a Bill of Sale for said personal property which shall be held in escrow by Howard S. Epstein, Esquire pending a final decreee in divorce between the parties.

THIRD: Commencing as of June 6, 1977, and continuing until September 1, 1978, HUSBAND shall

pay as alimony to WIFE for her maintenance the sum of Three Hundred and 00/100 ($300.00) Dollars per week. After September 1, 1978, HUSBAND shall pay as alimony to WIFE the sum of Two Hundred Fifty and 00/100 ($250.00) Dollars per week, said payments to continue for the remainder of WIFE's natural life or until such time as she should remarry, whichever shall first occur. HUSBAND shall deposit into the checking account of WIFE the sums payable hereunder two times per month commencing as of June 6, 1977.

If at any time during the term of this Agreement, the income of HUSBAND drops to less then ninety (90%) per cent of HUSBAND'S income for the year 1976, then, in such event, the aforesaid payments to WIFE shall be reduced in the same percentage as the decrease (if said decrease is in excess of ten (10%) per cent) in HUSBAND'S 1976 income.

FOURTH: Should any child continue her education beyond high school, HUSBAND shall pay all expenses incident to such continued education, including tuition, room and board, books and reasonable traveling expenses. This paragraph shall be liberally construed to permit each child to attend undergraduate and graduate colleges or universities and vocational, technical or finishing schools. WIFE shall keep HUSBAND informed of the progress and/or problems of said child including, by way of illustration and not limitation, grades, honors, social intercourse, and any other matters relative to the health and welfare of said child as soon as practicable after WIFE becomes aware of the same.

FIFTH: Custody of the children is confirmed in the WIFE. HUSBAND shall have the right of reasonable visitation at such time as shall not conflict with the interest of the children. WIFE agrees to keep HUSBAND informed as to the general health and welfare of said children. The parties agee that they shall freely discuss the health, education, welfare and activities of the children and to foster affection between each child

and the parties hereto. Neither of the parties shall do anything which may estrange any child from the other party or which may hamper the free and natural development of any child's love and respect for the other party.

SIXTH: HUSBAND agrees to be responsible for Blue Cross and Blue Shield coverage for WIFE and children so long as the parties are married. In the event of divorce, HUSBAND shall continue to provide Blue Cross and Blue Shield coverage for the children until graduation from college.

SEVENTH: HUSBAND agrees to pay to Richard J. Gasdaska, Esquire, attorney for WIFE, the sum of Nine Hundred ($900.00) Dollars payable as follows:

Upon execution of Agreement	$300.00
Upon service of complaint in divorce	$200.00
Upon entry of Decree in Divorce	$400.00

Said sums are in lieu of any claim by WIFE for alimony Pendente Lite, counsel fees and/or costs.

EIGHTH: HUSBAND shall be entitled to claim the Federal Income Tax deduction for dependency exemptions for his children so long as he is not in violation of any of the terms and conditions of this Agreement.

NINTH: WIFE agrees to loan HUSBAND the sum of Five Thousand and 00/100 ($5,000.00) Dollars with interest at the rate of 5¼% per annum on the unpaid balance. Principal payments shall be made in five (5) equal yearly installments of One Thousand and 00/100 ($1,000.00) Dollars each, the first payment to be made on June 1, 1982, or when the parties' children have completed their education, whichever shall last occur. Interest on such loan shall be payable to WIFE semi-annually, the first interest payment to be made six (6) months from the date of the entry of a final decree of divorce between the parties. In the event of death or remarriage of WIFE, all payments shall cease, or the

entire debt, if no payments have yet commenced, and the balance of the obligation shall become cancelled and void.

TENTH: HUSBAND acknowledges that as a benefit of his employment with Bethlehem Steel Corporation, he is the owner of a life insurance policy with Metropolitan Life Insurance Company. HUSBAND agrees to maintain WIFE as an irrevocable beneficiary under said insurance policy in the amount of One Hundred Thousand ($100,000.00) Dollars. HUSBAND agrees to maintain each of the parties' children as irrevocable beneficiaries under said insurance policy in the amount of Fifty Thousand ($50,000.00) Dollars for each child. HUSBAND agrees to forward to WIFE certificates of insurance evidencing the above every year.

Notwithstanding the above, in the event that the face amount of HUSBAND's insurance policy is reduced as a result of retirement or otherwise, then in such event, the above amounts shall be reduced in proportion to such decrease.

ELEVENTH: The parties shall continue to live separate and apart for the rest of their lives and each shall be free from interference, authority and control, direct or indirect, by the other as fully as if sole and unmarried. Each may reside of such place or places as he or she may select. Each may for his or her separate use and benefit, engage in any employment, business or profession which he or she may deem advisable.

TWELFTH: The parties shall not molest or interfere directly or indirectly with each other, nor shall either of them compel or attempt to compel the other to cohabit or dwell with him or her, by any means whatsoever. Neither party shall interfere with the rights, privileges or actions of the other, and each party shall act and do as he or she sees fit.

THIRTEENTH: In the event that subsequent to the execution of the Agreement WIFE interferes, directly or indirectly, orally or in writing, or in any other manner

with the employment of HUSBAND by Bethlehem Steel Corporation, or any other employer of HUSBAND, and such interference affects such employment, monetarily or otherwise, such conduct shall be deemed an essential breach of the within Agreement.

FOURTEENTH: WIFE shall not contract at any time or times in the name of the HUSBAND or in any way subject him to liability for any debt or debts for which the HUSBAND might in any way become liable as a result of their marital status. In the event that WIFE does subject HUSBAND to any liability hereunder, then WIFE agrees to forever defend and indemnify HUSBAND from and against such liability. In the event that HUSBAND is called upon to make any payments, except as specifically set forth herein, then HUSBAND shall have the right to set off such payments against the alimony payments set forth herein.

FIFTEENTH: If any term, condition, clause or provision of this Agreement shall be deemed or held to be void or invalid at law or otherwise, then only that term, condition, clause or provision shall be stricken from this Agreement as is held to be void or invalid, and in all other respects, the remaining provisions of this Agreement shall be valid and remain in full force and operation.

SIXTEENTH: The failure of the HUSBAND to make any and all payments and performances required by him to be made hereunder shall constitute a charge, in the event of his death, upon his estate, provided that liability for said payments was incurred prior to the death of HUSBAND. The HUSBAND'S estate shall be liable to the WIFE for any payments made by her which were the obligation of the HUSBAND hereunder.

SEVENTEENTH: Except as herein to the contrary provided, the parties shall and do hereby mutually remise, release and forever discharge each other from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity, which

either of them ever had, now has or may hereafter have against the other upon or by reason of any matter, cause or thing up to the date of the execution of this Agreement. It is the intention of the parties that henceforth there shall be, as between them, only such rights and obligations as are specifically provided in this Agreement.

EIGHTEENTH: Except as herein to the contrary provided, each party hereby waives, releases and relinquishes any and all rights that he or she may now have or hereafter acquire under the laws of the State of Pennsylvania, or any other jurisdiction:

(a) to share as a result of the marital relationship in the other party's estate upon the latter's death; or (b) to act as executor or administrator of the other party's estate or to participate in the administration thereof.

This waiver shall and does constitute a mutual waiver by the parties of their respective rights of election to take against each other's Last Will and Testament, now or hereafter in force under the laws of the State of Pennsylvania, or any law amendatory thereof, or supplemental thereto, or the same or similar law of any other jurisdiction.

It is the intention of the parties that their respective estates shall be administered and distributed in all respects as though no marriage had been solemnized between them. However, nothing herein contained is intended to or shall constitute a waiver by either party, of any voluntary testamentary provision which may be made in his or her favor by the other.

NINETEENTH: No modification of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement. No waiver of any breach or default hereunder shall be

deemed a waiver of any subsequent breach or default of the same or similar nature.

TWENTIETH: Either party shall be free at any time hereafter to institute suit for absolute divorce against the other. The execution of this Agreement shall not be deemed to constitute a waiver or forgiveness of any conduct on either party's part constituting grounds for divorce, and shall not be deemed to constitute a bar to either HUSBAND or the WIFE bringing an action for absolute divorce on legal and truthful grounds if they now exist, or may hereafter arise. However, the WIFE shall not, in any such divorce suit, seek or accept any order, judgment or decree providing for alimony, counsel fees or any other provision for her benefit than as herein provided. This Agreement shall not be merged into any judgment or decree of divorce granted to either party, but shall survive the same and shall be forever binding and conclusive on the parties.

TWENTY-FIRST: This Agreement shall be construed in accordance with the laws of the State of Pennsylvania, entirely independent of the forum where it may come up for construction or enforcement. If a Court of competent jurisdiction at any time holds that a portion of this Agreement is invalid, the remainder shall not be affected thereby and shall continue in full force and effect.

TWENTY-SECOND: The parties acknowledge that they are entering into this Agreement freely and voluntarily; that they have ascertained and weighed all the facts and circumstances likely to influence their judgment herein; that they have sought and obtained legal advice independently of each other; that they have been fully apprised of their respective legal rights; that all the provisions hereof as well as all questions pertinent hereto have been fully and satisfactorily explained to them; that they have given due consideration to such provisions and questions; and that they clearly understand and assent to all the provisions hereof.

TWENTY-THIRD: This Agreement contains the entire understanding of the parties. There are no representations, warranties, promises, covenants or undertakings other than those expressly set forth herein.

TWENTY-FOURTH: Each party shall, whenever called upon to do so by the other party, forthwith execute and deliver to or for the other party, any and all deeds, assignments, or other instruments which may be necessary or proper to carry out the provisions of this Agreement, or to effectuate its intent and purpose, or which may be required to enable the other party to sell, encumber, hypothecate, or otherwise dispose of the property now or hereafter owned or acquired by such other party.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals this 16th day of June, 1977.

WITNESS:

_____ Eleanore Stinner

ELEANORE STINNER

_____ Donald E. Stinner

DONALD E. STINNER

IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

ELEANORE STINNER, Plaintiff	)	No. 1979-C-7428
vs.	)	
DONALD E. STINNER, Defendant	)	IN ASSUMPSIT
ELEANORE STINNER, Plaintiff	)	No. 1979-CE-7429
vs.	)	
DONALD E. STINNER, Defendant	)	IN EQUITY

OPINION OF THE COURT

This matter is before the court for disposition of plaintiff's petition for attachment of the defendant for contempt of court. The dispute between the parties has its origin in a separation agreement entered into by the parties prior to their divorce, which provides for weekly payments of alimony to the plaintiff. On February 5, 1980, the author of this opinion filed an opinion, order, and final decree interpreting the terms of the property settlement agreement, and entering judgment in favor of plaintiff in the amount of $8,666.72, and ordering that defendant specifically perform his obligation to pay weekly support payments of $250.00 to plaintiff until her death or remarriage. That decision has been appealed to the Superior Court of Pennsylvania which has yet to act on the appeal.[1]

1. Even though the matter has been appealed, this court retains authority to act to "enforce any order entered in the matter

A court of equity cannot enforce its decree for the payment of money due under a separation agreement by attachment of the person of the defaulting husband. *Colburn v. Colburn, 279 Pa. 249 (1924); see, Commonwealth ex rel. Magaziner v. Magaziner,* 434 Pa. 1 (1969). This rule is unaffected by the fact that a divorce has been obtained. *Stull v. Stull*, 126 Pa. Superior Ct. 255 (1937).

Plaintiff argues that these cases should not be followed, because the statute upon which they are premised, Act of July 12, 1842, P.L. 339, section 1, 12 P.S. 257[2], has been repealed by the Judiciary Act, Repealer Act, Act of April 28, 1978, P.L. 202, No. 53, 42 P.S. 2002 (185). Plaintiff further argues that the Judicial Code, Act of 1978, April 28, P.L. 202, No. 53, section 10 (59), 42 P.S. 5108 which provides:

> Imprisonment for debt
>
> (a) Constitutional restriction. — The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be provided by law.

NOTES *(Continued)*

. . .". R. App. P. 1701(b)(2). Since no security has been filed by appellant, no supersedeas is in effect. R. App. P. 1731.

2. "No person shall be arrested or imprisoned on any civil process issuing out of any court of this commonwealth, in any suit or proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract, express or implied, or for the recovery of any damages for the nonperformance of any contract, excepting in proceedings as for contempt, to enforce civil remedies, action for fines or penalties, or on promises to marry, on moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment, in which cases the remedies shall remain as heretofore."

> (b) Statutory restriction. — Except in an action for fines and penalties, or as punishment for contempt, or to prevent departure from the Commonwealth, a defendant may not be arrested in any civil matter.

supports her view that an attachment may issue for the defendant and he may be imprisoned to force his compliance with the order and decree of February 5, 1980. Specifically, she argues that the new statute in subsection (b) authorized arrest in civil matters as punishment for contempt. She submits, although incorrectly, that this is a departure from prior law. The Supreme Court in *Knaus v. Knaus,* 387 Pa. 370 (1956) said, in interpreting the Act of 1836 which provided that "the punishment of imprisonment for contempt . . . shall extend only to such contempt as shall be committed in open court, and all other contempts shall be punished by fine only. . .":

> It has been held by this Court, however, that the Act of 1836 does not apply to an attachment to enforce a decree in equity: *Commonwealth ex rel. Lieberum v. Lewis,* 253 Pa. 175, 98 A. 31. In the *Lieberum* case this Court said (p. 181): "Under the foregoing statutes and authorities, the provision of the Act of 1836, limiting the power of imprisonment to contempts which occurred in the presence of the court, has no application to cases of attachments to enforce civil remedies, where the object is to secure compliance with a decree of court. The power to enforce their decrees is necessarily incident to the jurisdiction of courts. Without such power, a decree would in many cases be useless. 'All courts have this power, and must necessarily have it; otherwise they could not protect themselves from insult, or enforce obedience to their process. Without it, they would be utterly powerless': *Williamson's Case,* 26 Pa. 9, 18. In *Commonwealth ex rel. Tyler v. Small,* 26 Pa. 31,

> it was said (page 42): 'The imprisonment of the party who is in contempt is one of the ordinary steps in all proceedings of this kind, and is usually ordered as a matter of course, until he submits; and as one of the means of enforcing the decree in favor of the plaintiff.'

Thus, the issue is not whether a defendant may be arrested for contempt in a civil matter; clearly that has long been the case. Rather, the issue is whether the above cited provision of the Judicial Code abrogates a long line of authority rejecting contempt proceedings as a method of collecting a debt arising from a contract. See, *Youngs Petition,* 327 Pa. 267 (1937). We find nothing in the statute requiring such a result. Rather, plaintiff will have to look to the process of execution upon the property of defendant for satisfaction of the order and decree. *Stull v. Stull,* supra.

Petitioner submits that her application is appropriate because the Divorce Code of 1980, Section 503, authorizes contempt proceedings against a party who fails to comply with Court ordered payment of alimony. This contention ignores Section 103 which provides that the Divorce Code does not affect any marital agreement executed prior to the effective date of the act.

Petitioner's final argument that she is entitled to attachment of respondent's wages ignores the fact that this matter involves a contractual claim rather than "an action or proceeding for support or for board for four weeks or less." Judicial Code, Section 8127. Thus, the general rule exempting wages, salaries, and commissions from attachment, execution, or other process governs.

WHEREFORE, we enter the following:

IN THE
COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

ELEANORE STINNER, Plaintiff	)	No. 1979-C-7428
vs.	)	
DONALD E. STINNER, Defendant	)	IN ASSUMPSIT
ELEANORE STINNER, Plaintiff	)	No. 1979-CE-7429
vs.	)	
DONALD E. STINNER, Defendant	)	IN EQUITY

ORDER OF THE COURT

AND NOW, this 28th day of October, 1980, plaintiff's petition for attachment of the defendant and his wages is dismissed.

BY THE COURT,

J.